IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.118 OF 2006

Dr.Machindra Yashwant Patil ..Petitioner
Vs.
Shri.Tukaram Anyaba
Chavan & Ors. ..Respondents

...
Mr.S.A.Rajeshirue Advocate for Petitioner
Mr.Nitin P.Deshpande Adv.for Respondent Nos.1 and 2
Mr.S.V.More, A.P.P. for the State
...

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : AUGUST 17,2006

P.C.

1. Heard the learned advocate for the Petitioner-original complainant, learned advocate for the respondent nos.1 and 2 i.e. original accused and the learned A.P.P. for the State.

2. The petitioner is the complainant in RCC No. 82 of 1994 which was filed in the Court of learned Judicial Magistrate F.C. Atpadi, Dist. Sangli. The said case is under Sections 177, 181,193, 406, 465 read with Section 34 of IPC. Respondent Nos.1 and 2 were accused therein. The Petitioner was working as a Joint Secretary of Modern Education Society at Atpadi. It is the case of the

Petitioner that Respondents by affixing bogus and false signatures and thumb impressions of the Petitioner and certain other members passed Resolution to set up new Executive Body. It is also his case that Respondents prepared forged and false documents giving 'No Objection Certificate' purportedly given by the Petitioner for deleting his name and names of other members from the Managing Committee. The complaint came to be filed on 7.9.1994 before the learned Judicial Magistrate F.C. Atpadi and process came to be issued against the accused persons i.e. Respondent Nos.1 and 2 on 2.11.1995.

3. It is the case of the petitioners that on 7.9.1994 itself, he has preferred an application for sending the above mentioned documents to the handwriting expert. The said application came to be rejected by the learned Magistrate on the ground that complaint is pending since 1994 and complainant ought to have pressed the application before evidence was lead and the Petitioner had not furnished any explanation for pressing the said application at such a late stage in the year 2005. Thus, on these grounds, the application came to be

rejected.

4. Thereafter, the Petitioner preferred a second application dated 6.8.2005 for sending documents to the handwriting expert. In the said application, he has furnished explanation that when he preferred first application on 7.9.1994, the process was not issued in the said case, hence, he did not press the application at that stage. Thereafter, the accused challenged the order issuing process against them and the matter was carried to the Supreme Court. Due to the order issuing process being challenged, interim stay came to be granted and stay remained in operation upto 2002. Hence, the petitioner did not press his application dated 7.9.1994 till then. However, it is seen that admittedly the stay granted by the Supreme Court came to an end in the year 2002. Thereafter, the evidence was recorded by the trial Court. After the evidence was recorded, the first application dated 7.9.1994 was pressed after all the evidence was led and the second application was pressed after the statement of the accused were recorded under Section 313 of Cr.P.C. Even assuming that there was stay, the stay came to an end in the year

2002, even thereafter, till 2005, the Petitioner did not pursue his application dated 7.9.1994 or prefer a fresh application for sending documents to the handwriting expert. It is quite clear that Petitioner has pressed his application only at a much belated stage. If the complainant was serious about sending the documents to the handwriting expert, he would have pressed his application at a much earlier stage. The complainant was very much aware that it was necessary to obtain the opinion of the handwriting expert, yet the first application was not pressed till the year 2005 i.e. till the recording of evidence was over. As far as first application (Exhibit-6) is concerned, no explanation was rendered as to why it was being pressed after more than ten years. As far as the second application (Exhibit-96) is concerned, the above mentioned explanation has been given i.e. as the process was not issued in the said case, he did not press the application at that stage and further that the accused challenged the order issuing process against them and the matter was carried to the Supreme Court and interim stay came to be granted which remained in operation upto 2002. If this explanation is considered it is seen that

immediately after the process was issued the first application was not pressed. Assuming that the stay was granted by the Courts in respect of the proceedings while challenging the order issuing process, the stay came to an end in the year 2002. Even thereafter, for almost three years, no steps were taken by the Petitioner in respect of documents being sent to the handwriting expert. The 1st application dated 7.9.1994 was pressed after ten years after the stage of recording of evidence was over and the 2nd application with the same prayer i.e. to send documents to Handwriting expert was preferred after the Statement of accused was recorded under Section 313 of Cr.P.C. Clearly, the applications were pressed at a very belated stage obviously with a view to delay the proceedings which were almost over. In this view of the matter, no error can be found in the orders of the learned Magistrate dated 6.10.2005 and 29.10.2005.

5. Mr.Rajeshirue, the learned advocate for the Petitioner has placed reliance upon the decision of the Supreme Court in the case of **Zahira Habibulla H.Sheikh Vs. State of Gujarat** reported in **2004**

Cri.L.J. 2050, which relates to Gujarat riots, wherein it is observed thus:

. "If a Criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must not be a spectator and a mere recording machine but should be becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves".

6. The facts in the present case and the facts relied upon, are entirely different. In the present case, Petitioner had sufficient opportunity yet he has not availed of the opportunity to obtain the orders regarding sending documents to the handwriting expert. The fact that Petitioner has pressed his application at such a belated stage, shows that it was done only with a view to prolong the trial and the final decision in the said case. In this view of the matter, I am not inclined to interfere with the orders passed by the learned Magistrate. Writ Petition is dismissed. Ad-interim relief granted earlier, stands vacated.

[V.K.TAHILRAMANI,J.]